

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1610 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 - No

SUNDERBHAI R KAYASTH

Versus

SUBHASHBHAI OCHHAVLAL TRIVEDI

Appearance:

MR JITENDRA MALKAN for Petitioners
NOTICE SERVED for Respondent No. 1
MR SA PANDYA, APP for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 17/02/99

C.A.V. JUDGEMENT

Present petitioners-original accused have filed this petition under sec.482 of Cr.P.C. for quashing FIR No.I-311 of 1997 registered at Karelibaug Police Station, Vadodara.

2. Initially notice was issued and in turn, Mr.

Subhashbhai Ochhavlal Trivedi-respondent No.1 and learned APP for respondent No.2, Mr.S.A.Pandya, appeared before this Court. Mr.Subhashbhai O. Trivedi has stated at the time of issuing notice that he is personally appearing in the matter, but at the time of hearing, he did not remain present. Therefore, I have heard learned counsel for the petitioners and learned APP for the respondent No.2-State.

3. Learned counsel for the petitioners has drawn my attention towards FIR filed by the complainant against the present petitioners-accused under secs.406 and 114 of IPC and argued that no offence has been disclosed in the said FIR. He has argued that even if the FIR is believed as it is, it is a fit case wherein order under sec.482 of Cr.P.C. is required to be passed. He has also drawn my attention towards para 3(a) of the petition which is as under:

"Subhashbhai Ochhavlal Trivedi pausing himself as a Public Adviser is known for his scandalous activities. It may be stated that abovesaid Subhash Ochhavlal Trivedi did not only make scandalous and defamatory allegations against sitting Judges of this Hon'ble High Court, various Government Officers as well as Judicial Officers but he also published such scandalous allegations by way of distributing 'Patrikas' at various places including in the campus of this Hon'ble High Court with a sole intent to bring them to his terms. It may be stated that his such scandalous activities were nabbed by this Hon'ble High Court by convicting and imprisoning him under the Contempt of Courts Act."

He has further argued that as such, present petitioners have deposited 50% of the loan amount as deposit before receiving the loan amount and they have paid the whole amount back to respondent No.1, who is the original complainant. He has also drawn my attention towards pages Nos.6 and 7 of petition which show details of transactions in form of statements. According to learned counsel for the petitioners, now nothing is required to be paid to complainant by way of loan amount.

4. Learned APP, Mr.S.A.Pandya has mainly argued that defence of the petitioner-original accused cannot be looked into at this stage. He has also argued that while deciding this type of matters, what is required to be seen is the FIR which is registered at the relevant time. He has shown some portion of the FIR and argued that

ingredients of offence are established from the FIR itself and at present, only FIR has been recorded and Police is investigating the matter. If the petitioners like to have any defence, it can be made available at the time of trial. He has drawn my attention towards a judgment reported in AIR 1994 S.C. page 1256 wherein it is observed by the Apex Court as under:

"Criminal P.C. (2 of 1974), SS.482, 154 - FIR

Quashing of - Powers of Court under S.482 - FIR containing some important allegations which make out a cognizable offence at that stage and registration of FIR was only beginning of investigation - Quashing of FIR by High Court Not proper"

He has also drawn my attention towards another judgment reported in AIR 1992 S.C. page 1379. Relying on the same, he has argued that quashing of complaint and additional material filed before the Court were not justified by the Apex Court.

5. In view of the above two judgments of the Apex Court, when FIR discloses commission of cognizable offence which had still to be investigated thoroughly by Police, the defence put forward by the learned counsel for the petitioners-accused is not required to be taken into consideration at this stage and more particularly when learned counsel for the petitioners has relied upon para 3(a) of the petition and tried to prejudice the Court. The alleged act of petitioners is different one and Court should not look into this while deciding the present petition. I do not give much importance to the alleged allegations against the complainant. If any other remedies are available to the petitioners, the same can be availed of by the petitioners before the appropriate authority.

6. I am satisfied that this is not at all a fit case for quashing the FIR No.I-311 of 1997 registered at Karelibaug Police Station, Vadodara under sec.482 of Cr.P.C.

7. This Special Criminal Application is, therefore, rejected. Rule discharged. Interim relief vacated.

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